IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 7674

WONG YING WING,

Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner of Immigration, at the Port of Seattle,

Appellee.

Upon Appeal from the District Court of the United States For the Western District of Washington, Northern Division.

HONORABLE JOHN C. BOWEN, *Judge*

BRIEF OF APPELLEE

J. CHARLES DENNIS,
United States Attorney,

F. A. PELLEGRINI,
Assistant United States Attorney,

OWEN P. HUGHES,
Assistant United States Attorney,

Attorneys for Appellee

J. P. SANDERSON,
United States Immigration and Naturalization Service, Seattle, Washington.
On the Brief

Office and Postoffice Address:

222 Post Office Building,
Seattle, Washington.

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STATUTES CITED

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STATEMENT OF THE CASE

The appellant, WONG YING WING, is admittedly of the Chinese race. He claims to have been born in

San Francisco, California, November 11, 1899, and that he resided continuously in the United States until January 12, 1932. On August 5, 1930, he applied to the United States Immigration officials at Minneapolis for a citizen's return certificate, commonly known as Form 430, as authorized by Regulations of the Secretary of Labor, for the purpose of proving-up a citizenship status and facilitating his re-admission to the United States at termination of a contemplated visit to China. The said application was duly investigated and with all evidence connected therewith was forwarded to the Commissioner of Immigration, Seattle, port of intended departure and return, for approval or disapproval, as provided by the Regulations of the Department of Labor, and after a careful consideration of the same the Assistant Commissioner of Immigration, on August 21, 1930, denied and disapproved the said application on the ground that the appellant had not proved his claim of birth in this country. Triplicate copy of the application, Form 430, plainly marked "Disapproved" was returned to the Immigration Service at Minneapolis where with copy of the testimony in the case was apparently delivered to appellant's counsel in accordance with the established practice. The

appellant appealed from said unfavorable decision to the Secretary of Labor, who directed that a further examination be conducted to determine his citizenship status, which was done during December, 1930. Upon final consideration the Secretary of Labor held that the appellant had not proved his claim of birth in this country and on January 12, 1931, dismissed the appeal. Notwithstanding the action of the Secretary of Labor the appellant left the United States, returned May 29, 1934, and applied for admission to the United States as a native-born citizen thereof. After the usual hearing his application for admission was denied by a Board of Special Inquiry at the Seattle Immigration Station, from which decision he appealed to the Secretary of Labor who dismissed the appeal and directed that the appellant be returned to China. He thereafter filed a Petition for Writ of Habeas Corpus in the District Court of the United States for the Western District of Washington, Northern Division. The case now comes before this Court on appeal from the order of the District Court denying said petition.

ARGUMENT

"Exclusion" and "Deportation" are distinguished

in *ex parte Domingo Corypus*, 6 Fed. (2) 336. The appellant is an applicant for admission and is, therefore, amenable to the laws relating to "Exclusion" rather than "Deportation".

The appellant alleges in the first paragrauh, Page 5, and first paragraph, Page 12, of his brief that he is entitled to a judicial determination of his claim of American citizenship under authority of *Ng Fung Ho v. White*, 259 U.S. 276. This case is contrary to his contention. This question is definitely answered adversely to appellant in *Yoshimasa Nomura v. United States*, 297 Fed. 191, CCA9, in which the Court said:

> "The appellant makes the point that he was entitled to a judicial hearing on the question of his citizenship. But the appellant is in the position of one who is stopped at the border seeking to enter the country, and his right is determinable without a judicial hearing, or a hearing other than that which was had." Citing *United States v. Ju Toy*, 198 U.S. 253; *Tang Tun v. Edsell*, 223 U.S. 673; *Ng Fung Ho v. White*, 259 U.S. 276; *United States ex rel Bilokumsky v. Tod*, 263 U.S. 149.

The appellant cites the following cases as being in his favor, wherein the writ was sustained:

Ex parte Ng Bin Fong, 20 Fed. (2) 1014, D. C., Seattle,

United States ex rel Leong Ding v. Brough, 22 Fed. (2) 926, CCA2,

United States ex rel Fong Lung Sing v. Day, 29 Fed. (2) 619, D. C., N. Y.,

United States ex rel Leong Jun v. Day, 42 Fed. (2) 714, D. C., N. Y.

These four cases relate to foreign-born sons of alleged American citizen fathers and all were denied admission to the United States on the ground that the alleged father's previous testimony was inconsistent with the claim of relationship between the applicants and their alleged fathers, as is the issue here.

In *ex parte Ng Bin Fong, supra*, the Court rendered a decision granting the writ. On appeal to this Court, *Weedin v. Ng Bin Fong*, 24 Fed. (2) 821, the decision of the District Court was reversed and the writ denied, the Court holding that the actions of the immigration authorities in entering the exclusion order were justified by the facts and the law.

In *United States ex rel Leong Ding v. Brough, supra*, the Circuit Court of Appeals for the Second Cir-

cuit cites with approval *Ex parte Ng Bin Fong, supra,* which said decision was reversed by this Court in *Weedin v. Ng Bin Fong, supra.*

United States ex rel Fong Lung Sing v. Day, supra, and *United States ex rel Leong Jun v. Day, supra,* are decisions of the District Court at New York and both cite with approval *Ex parte Ng Bin Fong, supra,* which decision has been reversed in *Weedin v. Ng Bin Fong, supra.* The last decision has the effect of overruling the aforementioned four decisions in so far as this circuit is concerned. In addition, *United States ex rel Fong Lung Sing v. Day, supra,* was reversed, 37 Fed. (2) 36, CCA2.

The first paragraph, Page 8, of appellant's brief reads:

> "The cases lay down the uniform rule that the testimony of Chinese witnesses is not to be disregarded, and, taking into consideration other surrounding circumstances, the testimony of a Chinese person is to be given the same weight and credibility as that of any other witness. *Kwock Jan Fat v. White,* 253 U.S. 454."

We have read the decision and are unable to find anything therein upon which the quotation could be

based.

Other authorities cited by the appellant relate to discrepancies on collateral points between applicants for admission and their witnesses. The foundation of none of them are similar to the issues here and, therefore, have no application in this proceeding.

We find in appellant's brief such expressions as: "the manifest unfairness of the Board in disregarding certain substantial testimony without cause or reason", (page 4); "It was false and made for the purpose only of misleading the Secretary in arriving at a wrong conclusion." (Page 8); "However, an examination of the record of the Department of Labor will show that the immigration officials deliberately set out to decide adversely to the appellant, in spite of the testimony and the record. This practice of the immigration officials is so prevalent and well known that this Court has actually taken judicial notice of the practice." (Page 13); "This practice has become so prevalent that the immigration officials ignore all evidence and all records, and even where there are no discrepancies, pre-judge the issue by an order of exclusion of the immigrant." (Page 15); "The report of the Chairman of the Board

itself shows that the only testimony having any bearing upon the question of the appellant's citizenship was unfairly and, due to the misconduct of the members of the Board of Special Inquiry," (Page 25); "However, it is submitted that any errors or discrepancies in the record of the War Department should not be laid at the feet of the appellant," (Page 24); "The Board of Special Inquiry, following its usual tactics of attempting by third degree methods to bring out minor discrepancies * * * *." (Page 25). The appellant's petition for writ of habeas corpus does not allege misconduct on the part of any member of the Board of Special Inquiry or of any official of the Immigration Service, the Department of Labor or of the War Department, who had anything to do with this case, and no irregularity on the part of any of the said parties was alleged during the hearing on the appellant's petition in the District Court. The foregoing expressions should be disregarded as not representative of the conduct of officials of the United States Government. We may add that the mere fact that a decision of a court or tribunal may be wrong is no indication of an unfair hearing, *Yep Suey Ning v. Berkshire,* 73 Fed. (2) Page 751.

Section 23 of the Immigration Act of 1924 (8

USCA 221) places the burden of proof upon applicants for admission into the United States. All such applicants are presumed to be aliens until the contrary is proved, but the Chinese Exclusion Laws impose upon persons of the Chinese race a more positive degree of proof and this doctrine has been uniformly upheld by the courts.

Section 17 of the Act of February 5, 1917, (8 USCA 153) provides that Boards of Special Inquiry shall have authority to determine whether applicants for admission shall be allowed to land or shall be deported, and that

> " * * * * In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Secretary of Labor: * * * *."

In *Quon Quon Poy v. Johnson*, 273 U. S. 352, the Supreme Court said:

> "and that unless it appears that the Department officers to whom Congress had entrusted the decision of his claim, had denied him an opportunity to establish his citizenship, at a fair hearing, or acted in some unlawful or improper way or abused their discretion, their finding upon the question of citizenship was conclusive and not subject to

review, and it was the duty of the court to dismiss the writ of *habeas corpus* without proceeding further."

and see

Ju Wah Son v. Nagle, 17 Fed. (2) 737, CCA9,

Chin Ching v. Nagle, 51 Fed. (2) 64, CCA9,

Fong On v. Day, 54 Fed. (2) 990, CCA2.

"It must be borne in mind that this court must not substitute its judgment for that of the immigration boards on matters of fact."

Yep Suey Ning v. Berkshire, supra.

The immigration officers are exclusive judges of weight of testimony and credibility of witnesses appearing before them.

Masamichi Ikeda v. Burnett, 68 Fed. (2) 276 CCA9.

United States ex rel Mastoras v. McCandless, 61 Fed. (2) 366 CCA3.

Testimony of persons of the Chinese race. "Testimony produced may be insufficient in quantity or quality to establish a necessary fact, but still be admissible. It may not satisfy the judicial mind, but still be admissible." *United States v. Chin Sing Quong*, 224 Fed. 752. "And, by the way of caution, we may add that jurisdiction would not be established simply by proving

that the Commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced." *Chin Yow v. United States*, 208 U.S. 11-13. Chinese testimony is in a special class and does not stand up unless corroborated. The Chinese Exclusion Case, 130 U.S. 581; *Fong Yue Ting v. United States*, 149 U.S. 698; *Li Sing v. United States*, 180 U.S. 486. "They were not obliged to credit his uncorroborated testimony that he had received such papers and had lost them, * * *. It was no indication of unfairness that his testimony was not credited." *Wong Fat Shuen v. Nagle*, 7 Fed. (2) 611 CCA9. "It does not necessarily follow that, because four witnesses have testified positively that she was born in San Francisco, there being no witness to the contrary, their statements upon this question must be accepted as true. If such a rule were adopted and followed, there would be no more Chinese remanded in such cases." *Lee Sing Far v. United States*, 94 Fed. 837 CCA9, and see *Lew Loy v. United States*, 242 Fed. 405 CCA9.

The appellant was denied admission to the United States by a Board of Special Inquiry for the reasons

that he did not prove his claim of birth in the United States; that he was not in possession of an unexpired immigration visa; that he is an alien ineligible to citizenship not a member of any of the classes specified in Section 13 (c) of the Immigration Act of 1924. Of course, if the appellant proved himself to be a citizen of this country none of the excluding provisions would be applicable.

Throughout the Government's exhibits the alleged father of the appellant is known as Wong Heng Gee, or Wong Hong Gee, or Wong Hung Gwe, and the alleged mother's name is recorded as Lem Shee, Lum Shee or Lim Shee.

The name claimed by the appellant first became known to the Immigration Service through the application for admission of an alleged brother of appellant named Wong Moon Fay, subject of Government's Exhibit No. 24758/2-23, Wong Moon Fay is purported to have left the United States on a self-made indentification affidavit, without preinvestigation, via San Francisco November 7, 1902. He returned from China via the same port October 11, 1903, and applied for admission as a native-born citizen of the United States, and

during the course of the investigation he and his alleged parents testified in agreement that two sons and one daughter, described as:

Wong Moon Fay, 19 years, son,

Wong Ming Ying, 7 years, son, (now claimed to be the appellant)

Wong May Yu, 11 years, daughter,

were born to appellant's mother at 16 1/2 *Waverly Place,* San Franciso. The alleged mother testified that she was born in the *United States.*

Government's Exhibit 21285/2-2 contains the Immigration history of Wong Toy who is alleged to have departed without preinvestigation and returned via San Francisco September 10, 1906, and applied for admission as a native-born citizen of the United States. At the hearing he claimed the same parents as did Wong Moon Fay and stated that he was born KS 6-1-18 (February 27, 1880) at 845 *Washington Street,* San Francisco, where all his brothers and sisters were born, and had lived at said address until he was 18 years of age. His alleged parents testified in the case that all their children, 4 sons and 3 daughters, were born at 845 *Washington Street,* described as follows:

Wong Toy, 27 years, son,

Wong Fay, 25 years, son,

Wong Jung, 24 years, son,

Wong Wing, 16 years, son (said to be appellant here),

Wong Lin, 22 years, daughter,

Wong Yuk, 17 years, daughter,

Wong Ying, 20 years, daughter.

Thus, the number of children claimed born to the alleged parents of the appellant was increased by four between the dates of their testimony of October, 1903, and September, 1906, the youngest being 16 years of age. On this conflicting testimony the immigration authorities had a right to hold that the testimony of both dates was false. In this hearing the alleged mother testified that she was born in China.

The appellant testified (Page 10 of the record and at other times) that his name is Wong Ying Wing and that he was born KS 25-10-9, corresponding to November 11, 1899. Consequently, he would be less than 4 years old when his alleged parents testified in October, 1903, that they then had a son named Wong Ying, 7 years old and would be approximately 6 years and 8 months old when his alleged parents claimed in Sep-

tember, 1906, a son named Wong Wing, 16 years old. The appellant's age, based on his own statement that he was born November 11, 1899, does not agree with his age as given by his alleged parents. This age discrepancy, *per se*, disproves the appellant's claim of being a son of his alleged parents. There is also a variance in the name of the youngest son claimed by the alleged parents. In 1903 they stated their youngest son was named Wong Ming Ying and in 1906 testified that the name of their youngest son was Wong Wing, and it may be noted that in their testimony of 1906 they claimed a daughter by the name of Wong Ying.

The appellant in the first paragraph, Page 19 of his brief, admits that the alleged parents' testimony of 1906 with respect to their children is false but contends that their testimony of 1903 is correct. When the appellant admits that his alleged parents were guilty of perjury in 1906 he is in no position to brag about their integrity in 1903.

The alleged parents were given full opportunity in 1903 and 1906 to claim all the children they ever had and at neither time did they claim a son of the ap-

proximate age, or exact name, to correspond to the name and age of the appellant and it is certain that the appellant could not have been born at 16 1/2 Waverly Place and at 845 Washington Street as claimed by the alleged parents.

With a view of lessening the commercial traffic in the importation of contraband Chinese it has been consistently held through a long line of judicial decisions that Chinese are estopped from bringing children to this country who were not claimed by either parent when given the opportunity to do so. Therefore, the appellant is not entitled to admission to the United States on the ground of being a native-born citizen son of his alleged parents, and for the same reasons the admission of Wong Toy, an alleged brother, was contrary to law:

Fong Lung Sing v. Day, 37 Fed. (2) 36 CCA1,
Wong Som Yin v. Nagle, 37 Fed. (2) 893 CCA9,
Chin Lim v. Nagle, 38 Fed. (2) 474 CCA9,
Louie Foo v. Nagle, 56 Fed. (2) 775 CCA9,
Fong Kong v. Nagle, 57 Fed. (2) 138 CCA9,
Woo Suey Hong v. Tillinghast, 69 Fed. (2) 93 CCA1,
Louie Share Yen v. Nagle, 54 Fed. (2) 311 CCA9,

Soo Hoo Do Yim v. Tillinghast, 24 Fed. (2) 163 CCA1,

Ng Lin Go v. Weedin, 5 Fed. (2) 960 CCA9.

There is no record of either alleged parents of the appellant testifying before the Immigration Service since 1906. Their real identity and marital status is uncertain. THERE IS NO EVIDENCE TO SHOW THAT EITHER OF THE ALLEGED PARENTS EVER IDENTIFIED THE APPELLANT IN PERSON OR BY PHOTOGRAPH AS BEING THEIR SON.

In Government's Exhibit No. 7030/428, it is shown that the appellant testified August 5, and December 3, 1930, in an attempt to corroborate his claim of birth in this country, that when living at 513 2nd Avenue in Pittsburgh he registered as a native-born citizen under the Selective Draft Regulations, and did not claim any exemption; that he remembers a green card was issud at time of registration and later a white card was issued but did not remember that he received either card or the character of the building in which he registered. On June 12, 1934, Page 7 of the record, the appellant testified that while living at 532 2nd Avenue, Pittsburgh, he registered for the draft and

received a registration card which he lost. The War Department was requested to verify the appellant's claim of registration and under date of June 22, 1934, the War Department, speaking through E. J. Conley, Brigadier-General, advised the Immigration Service, Page 18 of the record, that no record could be found of a man named Wong Ying Wing as having registered with the Local Board for Division No. 1, Pittsburgh, which Board had jurisdiction over 532 2nd Avenue, but such a careful search was made that record was found of another Chinese bearing the same clan family name, Wong Gam Ying, 37 years of age, born January 6, 1880, residing at 513 2nd Avenue, who registered with Local Board for Division No. 1, Pittsburgh. When all the testimony of the appellant is considered with reference to his claim of registration for the draft the only conclusion that can be reached is that his claim is erroneous. The appellant may have been a resident of Pittsburgh during the Selective Draft period and if so it is no proof that he was born in the United States. If the War Department committed any irregularity in searching for record of appellant's registration the burden is on appellant to show it.

The alleged brother, Wong Mon Fay, testified in

behalf of appellant in an attempt to bolster up his claim of American citizenship. No proof has been submitted to show that Wong Mon Fay and the appellant are brothers. The citizenship of Wong Mon Fay conceded in 1903, denied in 1918, and allowed in 1919, rests on extremely doubtful evidence. As shown in Government Exhibit 24758/2-23, on April 5, 1918, Wong Mon Fay applied for a citizen's return certificate and claimed three brothers and two sisters, omitting one sister previously claimed, in partial harmony with the list of children claimed by his alleged parents in 1906. The application was denied on July 20, 1918, and again upon further consideration September 16, 1918, on the ground that his claim of birth in this country was not established. In 1919 he filed another application for a citizen's return certificate and submitted therewith an *ex parte* affidavit prepared by his counsel for the purpose of minimizing the conspiracy and reducing the degree of fraud perpertrated against the Government by himself and his alleged parents in claiming seven children in 1906. The said affidavit was made for the express purpose of increasing his chances of receiving a citizen's return certificate and for no other purpose. He admits in his affidavit that he is guilty of perjury,

fraud and conspiracy. It is self-evident that he did not recant or retract any of his criminal propensities on account of reformation, conversion to the truth or out of the goodness of his heart. Thus, he is discredited as a witness and the immigration officials were not required to believe any part of his testimony given in this proceeding. *Quan Wing Seung v. Nagle*, 41 Fed. (2) 58 CCA9; *Weedin v. Ng Bin Fong*, 24 Fed. 821 CCA9; *Ngai Kwan Ying v. Nagle*, 62 Fed. (2) 166 CCA9.

Citizen's return certificate, Form 430, *in possession of the appellant.*

The appellant in first paragraph, page 11, of his brief, attempts to justify an alleged belief that the triplicate copy of citizen's return certificate, endorsed disapproved created a right to re-enter the United States. The certificate is made an exhibit. If the appellant speaks English as well as he claims he should have understood the terms of the certificate. Exhibit 7030/428 contains the record covering the application of the appellant for a return citizen's certificate in 1930. It is shown that the application was denied by the Assistant Commissioner of Immigration at Seattle on the ground that the appellant was not shown to be a

citizen of this country. He was represented by counsel on appeal to the Secretary of Labor. The appeal was dismissed January 12, 1931. Triplicate form of the application, Form 430, marked "Disapproved" was apparently delivered to the appellant's attorney with copy of the testimony in the case for the purpose of perfecting the appeal and inadvertently got into the possession of the appellant. Appellant's attorney knew that the application was denied. Likewise the appellant knew that his application was denied for if otherwise he would not have employed an attorney to have the denial set aside. The general rule of law is that notice to the attorney is notice to the client. Appellant on his own responsibility, and without sanction or restraint of law, left the United States January 19, 1932, according to the outgoing manifest of one of the vessels of the American Mail Line. He returned to the United States on the Steamship President McKinley, arriving at Seattle May 29, 1934, presented to the Immigration authorities the aforementioned "Disapproved" copy of application for citizen's return certificate, Form 430, and applied for admission to the United States as a native-born citizen thereof. An original approved certificate, Form 430, much less a disapproved copy, is not

an adjudication of citizenship, *ex parte Chun Wing*, 18 Fed. (2) 119. The admission of Chinese is not an adjudication and the Government is not bound thereby.

White v. Chan Wy Sheung, 270 Fed. 764 CCA9;
Jo Mon Sing v. Weedin, 24 Fed. (2) 820 CCA9.

After a hearing before a Board of Special Inquiry at Seattle and the taking of testimony from the appellant's alleged brother, Wong Mon Fay, at Minneapolis, and the consideration of all evidence set forth in the exhibits it was held that the appellant had not established his claim of birth in this country and therefore denied him admission. Thereafter he appealed from said decision to the Secretary of Labor, Washington, D. C., where he was ably represented by counsel, Pages 40-46 of the record. The appeal was dismissed. The findings of the Board of Special Inquiry are shown on Pages 31-34 and of the Board of Review and Secretary on Page 47 of the record.

It is conceded that the appellant resided in the United States a number of years but how he originally entered the United States is not explained. He admits that he never attended public school in the United

States. Various courts have held that if a Chinese did not attend school during his youth it is evidence that he was not then a resident of this country.

The appellant claims in first paragraph, Page 10, of his brief that he resembles his parents and brother Wong Mon Fay. Photograph of the appellant is attached to Form 430 of July 16, 1930, in Exhibit 7030/428, and photograph of Wong Mon Fay is attached to Form 430 of March 2, 1921, in Exhibit 24758/2-23. Photographs of the alleged parents are in the same exhibit. The immigration officials did not find any special resemblance between the appellant and any of his alleged relatives. Resemblance between Chinese is commented upon by Judge Neterer in *ex parte Wong Suey Sem*, 20 Fed (2)' 148; *Wong Som Yin v. Nagle, supra.*

Since the alleged parents claimed seven children in 1906, evidently for the purpose of selling birthrights to Chinese at a later date it is only natural that the appellant is able to identify the photographs of his alleged parents and alleged brother Wong Mon Fay. However, he failed to identify the photograph of Wong Toy, a son claimed by his alleged parents and living in Minneapolis, when he testified at Minneapolis August 5,

1930, Page 7 of the testimony, Exhibit No. 7030/428 and Page 6 of the record. It is believed from consideration of the entire record that the appellant bought the birthright of a mythical child claimed by the alleged parents in 1903 and 1906 together with available family history and is now impersonating said mythical child.

Appellant says in first paragraph, Page 12 of his brief "In consideration of this issue the court should bear in mind the dicta of the Supreme Court in *Kwock Jan Fat v. White*, 253 U.S. 454, that it is better that many persons be admitted erroneously than that one United States citizen should be denied his birthright." Without admitting the authenticity of the quotation it has no greater meaning than "that it is better that many defendants be acquitted erroneously than that one innocent person be convicted." On the facts, the Kwock Jan Fat case is clearly distinguishable from the issues here involved. Of *Quon Quon Poy v. Johnson*, 273 U.S. 352; *Tang Tun v. Edsell*, 223 U.S. 673; *Chin Bak Kan v. United States*, 186 U.S. 193; *Quock Ting v. United States*, 140 U.S. 417. In the latter case the Court said:

"He may be contradicted by the facts he states as completely as by direct evidence; and there may be so many omissions in his account of particular transactions, or of his own conduct, as to discredit his whole story. His manner, too, of testifying, may give rise to doubts of his sincerity.

"The question remains whether there was such a conflict of evidence that different conclusions might be reached as to the relationship of the applicant to the alleged father; for, if there was, the conclusion of the Department of Labor is final."

Soo Hoo Do Yim v. Tillinghast, 24 Fed. (2) 163 CCA1.

It is believed that the doctrine expressed by this Court in *Chin Wing v. Nagle*, 55 Fed. (2) Page 611, is amply supported by *United States ex rel Fong Lung Sing v. Day*, 37 Fed. (2) 36 CCA2, and is applicable here:

"We are not holding, however, that as a matter of fact Chin Wing is not the true son of Chin Sung. We do hold, however, that the discrepancies, especially that concerning the applicant's schooling, are sufficiently serious to preclude the determination that the applicant was not given a fair hearing by the two Boards or that the District Court committed error in sustaining the findings of these Boards. Reasonable men might easily disagree as to the probative effect of these discrepancies. While there is possibility of such disagreement among reasonable men, the findings of

> administrative boards of the kind that passed upon the appellant's case will not be disturbed." and quoting from *Tulsidas v. Collector of Customs*, 262 U.S. 258 "We think, rather, it will leave the administration of the law, where the law intends it should be left, to the attention of officers made alert to attempts at evasion of it, and instructed by experience of the fabrications which will be made to accomplish evasion."

The appellant's claim of American nativity is predicated upon being a son of his alleged parents, fortified by his alleged registration under the Selective Draft Regulations and the testimony of Wong Mon Fay. Neither of the first two allegations have been proved and due to conflicting testimony and lack of support they are not sustained by the evidence submitted. Witness Wong Moon Fay is discredited. Consequently the appellant is left without proof of his assertion that he is a native of this country. "The fabrication of testimony is always a badge of weakness in a case and when clearly established justifies a conclusion of fraud in the entire case." *Gung You v. Nagle*, 34 Fed. (2) Page 850 CCA9.

CONCLUSION

The appellant was accorded a fair hearing by the

Immigration officials and failed to sustain the burden which was upon him to establish his claim. The evidence does not constitute convincing proof that the appellant was born in the United States and is not of such a nature as to require, as a matter of law, a favorable finding in that respect. The discrepancies in the testimony constitute evidence upon which the immigration officials could reasonably arrive at their excluding decision. The said officials did not abuse their discretion committed to them by the statute, and their excluding decision is not arbitrary, capricious or in contravention of any rule of law, or in conflict with any pricinple of justice; hence, it is final. The district court did not commit error in denying the Writ of *Habeas Corpus*, and its judgment and order should be affirmed.

Respectfully submitted,

J. CHARLES DENNIS,
United States Attorney

F. A. PELLEGRINI,
Assistant United States Attorney

OWEN P. HUGHES,

Assistant United States Attorney

J. P. SANDERSON,

United States Immigration and Naturalization Service,
On the Brief.